

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	3.3.01
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	August 18, 2000
<b>SUBJECT</b>	Permanent Program (Chapter 19) Enforcement & Inspection Procedures	<b>Section</b>	Enforcement
		<b>Last Revised</b>	3-12-97

### **OBJECTIVE AND INTENT:**

To ensure the Field Inspector/Supervisor inspects assigned operations in an accurate, consistent, and timely manner and issues necessary enforcement action(s).

### **GENERAL:**

The Field Inspector must ensure that the permittee complies with the requirements of the Act, and particularly with the performance standards set forth in the Virginia Coal Surface Mining Reclamation Regulations (Subchapter VK).

For the purpose of conducting an inspection, the Inspector or authorized representative of the Director has the right of entry to, upon, or through any coal surface mining activity without advance notice (upon presentation of his or her DMLR/DMME identification card).

### **Inspection Frequency:**

The Inspector shall conduct an inspection on:

- an **active site**: at least one partial inspection per month and one complete per calendar quarter.
- an **inactive site**: (completion materials approved and Phase II reclamation completed) periodically as deemed necessary, but at least one complete inspection per calendar quarter.
- an operation in **Temporary Cessation** status: periodically as deemed necessary, but at least one complete inspection per calendar quarter.
- a **coal exploration site**: at least one complete inspection per calendar quarter.
- an **abandoned site**, as per 4 VAC 25-130-840.11(g) and (h): at least one complete inspection per year; however, additional inspections may be necessary to monitor for changes of environmental conditions or operational status at the site. Once the site is determined to be abandoned by the Inspector, a request to publish the notice required by 4 VAC 25-130-840.11(h)(2) shall be forwarded to the Enforcement Office Services Specialist.
- a **permit revocation site** shall be inspected as an active site until Phase II reclamation has been achieved. Once the standards of Phase II reclamation have been met, the site may be classified as an inactive site or abandoned site, and shall be inspected, accordingly.

An **immediate inspection** must be conducted when:

- the Inspector or other authorized representative has reason to believe that a violation at the site exists, or a condition or practice exists, which creates (or could create) an imminent danger to the public health or safety or threatens significant imminent harm to the environment.
- the Inspector receives information alleging that a violation, condition or practice exists at the site which poses an actual or potential threat to the public health or safety or to the environment.
- a citizen requests an inspection under 4 VAC 25-130-842.12.

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### **Procedures for Conducting an Inspection - Part 4 VAC 25-130-840:**

Upon arriving at the mine site, each DMLR representative shall make his or her presence known to the official in charge by presenting proper credentials (clip-on ID or DMLR ID card). This is required even if prior identification has been made during previous visits.

Inspection or entry into buildings shall be conducted only upon consent of the permittee or by search warrant.

If the Inspector plans to visit a permit site with the expectation that no company representative will be present, the company's office personnel should be contacted and informed that an inspection or visit will be conducted.

The Inspector shall review, with the person in charge of the day-to-day operations, the detailed plans and regulations during the complete inspection of the active permit. (However, this is not required if the permit is in temporary cessation status.)

This review will enable the operator to balance what the company may be planning to do during the next quarter with what the actual approved plans and regulations may require or allow it to do. It will also allow the operator to know beforehand whether the company could follow its approved plans or whether it needs to revise them to fit the permit site conditions.

### **Inspection Reports:**

Inspectors shall describe and document their inspection findings and summarize discussions with the company's representative on the "Inspection Report" form (**DMLR-ENF-044S**). The Inspector shall ensure that:

- all applicable spaces are completed.
- the narrative identifies all pertinent persons who were present or contacted during the inspection.
- the narrative describes conditions or performance standards observed during the inspection. (the **Civil Penalty Assessment Manual** provides a reference list of potential performance standard violations with the underlying regulation or statute).
- the narrative describes any change to the permit's status since the prior inspection. This may include recent revisions to the plans, bond reductions, new mining activity, additional reclamation, tree stocking, and so forth.

### **Issuance of Enforcement Action:**

**Notice of Violation** (**NOV**): This notice is generally issued by the Inspector. An "Inspector in Training" should not issue a NOV until completing the 90-day training period. Until the training period is completed, the Inspector would issue the NOV.

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A NOV is issued by the Inspector for a violation of the Act, the regulations, or a condition of the approved plans for the permit that does not create an imminent danger situation. The NOV will be:

- issued to the permittee or the agent of the company, and to the approved contractor(s) or operator(s).
- hand delivered, whenever practical, or may be served by certified mail.

The NOV form (**DMLR-ENF-045S**) shall be completed by the Inspector and shall specifically:

1. state the nature of the violation;
2. cite the complete regulation or statute violated (e.g., 4 VAC 25-130-816.41(e)(2);
3. describe that portion of the permit area to which the NOV applies;
4. set forth the remedial action required, including interim measures; and,
5. set a reasonable time for abatement, if applicable.

The Inspector may extend the time set for abatement if the permittee's inability to comply within the abatement period was not due to a lack of diligence on the permittee's part. The total time for abatement under the NOV (including all extensions) must not exceed 90 days from the date of issuance, unless the conditions set forth in 4 VAC 25-130-843.12 (f) are present. If the company requests an extension, the Field Supervisor shall evaluate the request with the Inspector. The Supervisor will notify the company by letter as to when the request is approved or denied.

The Inspector shall describe each identified violation in the inspection report according to the violation effect guideline. (Refer to **Civil Penalty Assessment Manual**).

The Inspector shall terminate each citation of violation under the NOV by form **DMLR-ENF-047S** when he or she determines that the violation has been abated.

If the permittee fails to abate a violation cited under the NOV within the required abatement period, a **failure to abate cessation order** shall be issued in accordance with 4 VAC 25-130-843.11(b).

**Cessation Order (CO):** This order is generally issued by the Inspector after consulting with the Supervisor or Reclamation Services Manager (radio or telephone contact).

If the violation constitutes an imminent danger to the public or threat of significant imminent environmental harm, a CO shall be issued by the Inspector (form **DMLR-ENF-046S**).

If the CO does not completely abate the imminent danger or threat, the Inspector must also issue appropriate NOV(s) to the permittee to require affirmative actions to promptly abate the condition, practice, or violation cited. The CO and NOV(s) shall specifically set forth the date (and if necessary, the time) by which corrective measures must be accomplished.

A **failure to abate CO** shall be issued by the Inspector to the permittee when the company fails to comply the NOV within the set or extended abatement date. This type of CO shall be issued without an abatement date and shall expire after 30 days. (Note: The Inspector must compute time on all orders as prescribed in 4 VAC 25-130-700.15).

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The CO will be:

- issued to the permittee or the agent of the company (and to the approved contractor or operator); and,
- hand delivered, whenever practical, or may be served by certified mail.

The CO form (**DMLR-ENF-046S**) shall be completed and signed by the Inspector (or the authorized representative who issued it) and shall specifically:

1. state the nature of the violation;
2. cite the complete regulation or statute violated (e.g., 4 VAC 25-130-816.41(e)(2);
3. describe the portion of the permit area to which it applies;
4. set forth the remedial action required, if any; and,
5. set a reasonable time for abatement (**not applicable for failure to abate COs**).

The inspection report shall also instruct the company to submit current ownership and control information to the DMLR (see Procedure 2.2.05, Notification Process – Issuance of Cessation Orders).

Reclamation and other operations designed to protect the public and environment must continue during the compliance period set out by the order.

The Inspector shall describe each violation in the inspection report according to the violation effect guideline. (Refer to **Civil Penalty Assessment Manual**).

The CO will remain in effect until the condition, practice, or violation is abated or the order is vacated, modified, or terminated in writing by the Inspector. The Inspector shall terminate each citation of violation under the CO by using form **DMLR-ENF-047S** when the Inspector determines that the violation has been abated.

#### Discussion with Permittee or Agent of Company:

When issuing a NOV or CO, the Inspector shall explain to the person served:

- the violation(s) cited (law, regulation, or plan requirement not complied with).
- that a NOV or CO is being issued, discussing:
  - a) remedial action required, and
  - b) time limit for abatement.
- consequences of failing to comply with the enforcement action.
- the right to contest the action in an informal or formal hearing.
- that a civil penalty may be assessed for a NOV and will be assessed for a CO.

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Further Documentation:

The Inspector shall mark the approximate location of each identified violation and other pertinent information on the most current permit map, including his or her initials and the inspection date, where applicable.

Alternative Enforcement Action - In accordance with 4 VAC 25-130-845.15(b)(2), a **failure to abate** CO expires 30 days after issuance and alternative enforcement action must be taken within 30 days of the expiration. (See Procedure #3.3.08).

Hearings - see **DMLR ADMINISTRATIVE HEARINGS MANUAL**.

Civil Penalty Assessment Process - see **CIVIL PENALTY ASSESSMENT MANUAL**.

Distribution of Inspection Reports and Enforcement Actions : The Inspector shall:

- provide a copy to permittee/operator or authorized representative;
- retain a copy for his or her files; and,
- forward the original to DMLR office, by way of the Supervisor.

Flow of Reports - Reports shall be forwarded by the Supervisor to the DMLR office within 10 working days of the inspection or service of the NOV/CO.